SUPREME COURT, U. S.
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IN THE

# Supreme Court of the United States

October Term, 1968

No. 419

CHARLES E. HART, JR.,
Petitioner,

vs.

THE OHIO STATE BAR ASSOCIATION,
Respondent.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### STATEMENT OF THE CASE

Disciplinary proceedings in Ohio are under the exclusive jurisdiction of the Ohio Supreme Court.

Pursuant to its Rule XVIII the Ohio Supreme Court, as of January 1, 1957, put the investigation of charges against attorneys in the hands of a Board of Commissioners on Grievances and Discipline consisting of 17 lawyers appointed by the Supreme Court, one from each of 17 districts in the state, each to serve a term of three years. Under the Rule, charges are heard by a panel of three members of the Board, are reviewed by the entire Board of 17 and are then heard on brief and oral argument by the Supreme Court of Ohio.

That is the procedure followed in this case. Rule XVIII is attached hereto as Appendix A. Rule XIX, Rules of Professional Conduct is attached hereto as Appendix B.

Rule XVIII, in addition to providing for the disciplinary procedure to be followed, also defines misconduct. Paragraph (5) (a) states that

> "misconduct shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law or the commission or conviction of a crime involving moral turpitude."

Respondent, the Ohio State Bar Association filed a complaint against petitioner, Charles E. Hart, Jr., charging him with misconduct as an attorney at law in that he was convicted of the crime of wilfully and knowingly failing to file federal income tax returns for the years 1960, 1961 and 1962 in violation of Canons 29 and 32 of the Canons of Professional Ethics.

The Supreme Court of Ohio, in its Per Curiam opinion (Petitioner's brief p. 15) found the following to be the facts.

"On March 10, 1966, an information was filed against petitioner in the United States District Court for the Southern District of Ohio, Western Division, charging that he did wilfully and knowingly fail to make and file federal income tax returns for the years 1960, 1961 and 1962 in violation of Section 7203, Title 26, U.S. Code. Petitioner was charged with having received gross income of $29,874.70 in 1960, $28,804.28 in 1961 and $36,669.16 in 1962. Section 6012 (a) (1), Title 26, U.S. Code, requires an in-

dividual having gross income of $600.00 or more for the taxable year to file a federal income tax return.

"To this information petitioner entered a plea of nolo contendere. Petitioner was convicted and sentenced to two years imprisonment and was fined $2,000.00. The sentence of imprisonment was suspended and petitioner was placed on probation for two years. The $2,000.00 fine was paid.

"In defense to the charged misconduct petitioner admitted his failure to file the federal income tax returns but denied that such conduct violates the Canons of Professional Ethics. Petitioner contended that prior to the taxable years in question, he made certain loans totaling $16,700.00 to a dairy which were not paid, that he decided to write the bad debts off against his taxable income for the years 1960, 1961 and 1962, and that the aggregate of his otherwise net taxable income for those years was less than $16,700.00. Petitioner claimed he believed that he was under no obligation to file a federal income tax return if his exemptions and deductions exceeded his gross income.

"The record indicates that, while petitioner did not specialize in the practice of tax law, he had prepared numerous income tax returns for his clients during his professional career and that he was entitled to practice before the Internal Revenue Service.

"The question for determination is whether the discipline of suspension for an indefinite period from the practice of law recommended by the Board of Commissioners on Grievances and Discipline is warranted."

The Supreme Court of Ohio confirmed the recommendation of the Board and held:

"This court in *Cleveland Bar Assn. v. Bilinski* (1964), 177 Ohio St. 43, 201 N.E. 2d 878, and *Dayton Bar Assn. v. Prear* (1964), 175 Ohio St. 543, 196 N.E. 2d 773, held that

the continued and totally unjustified failure of an attorney at law to file income tax returns is sufficient grounds to warrant a suspension for an indefinite period from the practice of law regardless of whether any 'moral turpitude' is involved. In the light of these authorities, respondent's wholly unwarranted failure to file federal income tax returns for three consecutive years supports the board's recommendation of suspension for an indefinite period from the practice of law."

Petitioner contends here that "Canons 29 and 32 of the Canons of Professional Ethics are so indefinite, uncertain and vague that their application has deprived petitioner of due process of law under Amendment XIV to the Constitution of the United States." (Petitioner's brief p. 6)

## QUESTIONS PRESENTED

1. When an attorney at law has been convicted of failing to file income tax returns by a Federal Court, may such attorney be subsequently disenfranchised in a state court proceeding by reason solely of the application of Canons 29 and 32 of the Canons of Professional Ethics to said conviction when there was no charge or finding that said conviction involved moral turpitude and where said Canons are vague, indefinite and uncertain?

2. Where under Rule of the Supreme Court of Ohio a seventeen (17) member Board of Commissioners is appointed to hear and make findings and recommendations respecting alleged misconduct of attorneys, may such hearing be conducted before only three (3) members when said three (3) members do not report directly to the Supreme Court of Ohio but instead report to the remaining members which do not hear either side of the controversy and which in turn report to the Supreme Court of Ohio?

## ARGUMENT

Petitioner was convicted of a crime and was sentenced to two years imprisonment and fined $2,000.00. The sentence was suspended and he was placed on probation for two years.

He contends here that the Supreme Court of Ohio may not discipline him for misconduct based on a finding that his conduct violated Canons 29 and 32. This contention is somewhat contrary to the petitioner's contention in the proceedings in the court below. Throughout those proceedings petitioner repeatedly suggested and urged that his conduct should merit a reprimand. We quote from his brief filed in the Supreme Court of Ohio:

"Conclusion—On the basis of the circumstances surrounding the Respondent's failure to file income tax returns for which he was convicted and on the basis of his good character, unquestionable competence and excellent reputation in his community where he lives and practices law, we believe and urge that the public interest could be serviced by limiting the discipline to that of reprimand."

At the same time that petitioner was urging the Supreme Court of Ohio to limit the discipline to a reprimand, he also stated to that court: "That the conclusion of said Board that Respondent has violated Canons 29 and 32 of the Canons of Professional Ethics has deprived Respondent of due process of law under Amendment XIV to the Constitution of the United States because said Canons are indefinite, uncertain and vague."

Thus, Petitioner presented the incongruous position to the Supreme Court of Ohio of tacit admission of misconduct as charged, urging that discipline be limited to a reprimand on the one hand, and at the same time arguing that to find

him guilty of misconduct as charged would deprive him of due process of law.

Accordingly, we submit that question number one was not properly presented to the Supreme Court of Ohio for decision and is not properly here.

Petitioner relies on the case of *Czarra v. Board of Medical Supervisors,* (1905) 25 App. D.C. 443. In the *Czarra* case the court held that a statute which authorized the board of medical supervisors to revoke a physician's license for "unprofessional or dishonorable conduct" is void for uncertainty. This view is much in the minority. Federal cases decided since *Czarra* hold that the term "unprofessional conduct" as applied to the conduct of lawyers, physicians and dentists is not unconstitutionally vague. *Brinkley v. Hassig,* (1936 CA 10th Kan.), 83 F. 2d 351; *Phillips v. Ballinger* (1911), 37 App. D. C. 46; *Yoshizawa v. Hewitt* (1931 CA 9th Hawaii), 52 F. 2d 211 (gross carelessness or manifest incapacity not unconstitutionally vague) the view generally expressed by the courts is that these terms are well understood by the courts and by the profession.

This court, in the case of in *Re Secombe* (1836), 15 L ed 565, pointing out that a Minnesota statute prescribing the rule for the removal of attorneys described only in a general way some of the offenses for which attorneys might be removed, said:

"It is difficult, if not impossible, to enumerate and define, with legal precision, every offense for which an attorney or counselor ought to be removed. And the legislature, for the most part, can only prescribe general rules and principles to be carried into execution by the court with judicial discretion and justice as cases may arise, * * *"

Reflecting this same principle this court's own Rule 8 provides as one of the grounds for disbarment of an at-

torney "conduct unbecoming a member of the bar of this court."

Of course, in making the determination that the lawyer is guilty of unprofessional conduct, the conduct in question must be such as is generally condemned by all responsible members of the bar. Federal income tax conviction is so recognized by the state courts that have considered the matter.

Over 100 "Income Tax Conviction" cases are collected and annotated in *American Law Reports*, and *Supplement*, 59 ALR 2d 1398-1407. A review of these cases reveals that there is unanimity of opinion among the state courts that federal income tax conviction constitutes unprofessional conduct by a lawyer. The courts consider this proposition so elemental that in most of the cases there is no discussion of the antecedent rule or statute. Rather the discussion in the cases concerns the degree of impropriety inhering in the conduct and the mitigating circumstances in each case.

Each of those cases was considered individually, upon its merits, including mitigating circumstances involved, and the discipline imposed varies accordingly.

The Supreme Court of Ohio defines misconduct or "unprofessional conduct", in pertinent part, as any violation of the Canons of Professional Ethics. "Canons 29 and 32 are broad in their terms. Canon 29 admonishes that an attorney should at all times strive to uphold the honor of the profession. And, although the express admonition of Canon 32 that an attorney must 'observe and advise his client to observe the statute law' is not applicable until the statute has been construed and interpreted by competent adjudication, the validity of the filing requirements of the Internal Revenue Code is not in doubt." *Cleveland Bar Assn. v. Bilinski* (1964), Ohio St. 43, 44, 201 N.E. 2d 878. The

Court has found as a fact that petitioner's conduct violates Canons 29 and 32 and that he is guilty of misconduct. We submit that that decision follows the near unanimous view among the state courts that federal income tax conviction constitutes unprofessional conduct by an attorney at law.

Petitioner also complains, (Petitioner's brief p. 12) that "under Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, in particular paragraphs 10 and 14, the actual hearing is before 3 members of the Board of Commissioners who are charged to hear and take evidence and report to the full Board. The full Board of Commissioners is then charged to review and report to the Supreme Court of Ohio. In short, there is no provision for, nor was there any direct reporting by the panel members who heard this case to the Supreme Court of Ohio."

Petitioner also questions the thoroughness of the full Board's review and complains of a lack of an opportunity to appear before the full Board and, raise questions. (Petitioner's brief, p. 13)

Petitioner contends that the "absence of review in the fullest and usual manner and method and the justifiable inference drawn from the record as to the limited extent of review has deprived Respondent (Petitioner) of due process of law."

The record in this case will show that petitioner filed a brief with the hearing panel which summarized the evidence and presented his position on the evidence. That brief was before the full Board of Commissioners for review.

Due process in disciplinary proceedings requires that the attorney be given notice of the proceeding and an opportunity to defend at a hearing, and that the proceeding be essentially fair.

The proceedings are deemed free of any due process defect, as far as procedure is concerned, if the basic require-

ments of notice and hearing are met; the form of the notice and hearing is immaterial. *Randall v. Brigham*, 7 Wall 523, 19 L ed 285.

We submit that these proceedings before the Supreme Court of Ohio are free from any due process defect. Petitioner was given notice of the charges against him. He was given an opportunity to and did defend himself before the hearing panel of the Board of Commissioners on Grievances and Discipline who received the evidence in this case, presented written and oral argument to that hearing panel, written argument to the full Board of Commissioners, and written and oral argument to the Supreme Court of Ohio stating his objections to the findings and recommendations of the Board of Commissioners. Surely due process does not require more.

## CONCLUSION

There is no reason to analyze the law presented by petitioner in support of his Petition for Writ of Certiorari. The petitioner had a full and fair hearing before an impartial tribunal, the Supreme Court of Ohio.

The Ohio State Bar Association respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

**The undersigned hereby certifies that three copies of the foregoing brief have been mailed by first class mail with postage prepaid to Attorneys for Petitioner, George E. Tyack, James C. Justice and Gordon Bolon, respectively at their offices.**

**/s/ SAMUEL T. GAINES**
***of Counsel for Respondent***

## APPENDIX A

## RULE XVIII[2]

## DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

**(1) Creation of Board of Commissioners on Grievances and Discipline.** There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. One member of such Board shall be appointed from each of the following districts: *District 1,* comprising Butler, Clermont, Clinton, Hamilton and Warren Counties. *District 2,* comprising Darke, Miami, Montgomery, Preble and Shelby Counties. *District 3,* comprising Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert, Williams and Wood Counties. *District 4,* comprising Lucas County. *District 5,* comprising Crawford, Delaware, Marion, Morrow, Ottawa, Sandusky, Seneca and Wyandot Counties. *District 6,* comprising Champaign, Clark, Fayette, Greene, Logan, Madison and Union Counties. *District 7,* comprising Franklin County. *District 8,* comprising Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto and Vinton Counties. *District 9,* comprising Coshocton, Fairfield, Knox, Licking, Muskingum and Perry Counties. *District 10,* comprising Ashland, Erie, Holmes, Huron, Lorain, Medina, Richland and Wayne Counties. *District 11,* comprising Portage and Summit Counties. *District 12,* comprising Cuyahoga County. *District 13,* comprising Ashtabula, Columbiana, Geauga, Lake,

[2] Same as former Rule XXVII as amended March 11, 1964.

Mahoning and Trumbull Counties. *District 14*, comprising Carroll, Stark and Tuscarawas Counties. *District 15*, comprising Belmont, Guernsey, Harrison, Jefferson and Monroe Counties. *District 16*, comprising Allen, Auglaize, Hardin and Mercer Counties. *District 17*, comprising Athens, Hocking, Meigs, Morgan, Noble and Washington Counties. The term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment. Provided, however, that any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners, and designate a Secretary, each of whom shall have authority to execute journal entries on behalf of the Board of Commissioners and of panels thereof.

**(2) Jurisdiction of Board.** The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, make findings and submit recommendations to this Court, as hereinafter provided,

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law, person under suspension for an indefinite period from the practice of law, or judge, or

(b) concerning the mental illness of any attorney and counselor at law or judge, or

(c) relating to petitions for reinstatement as an attorney and counselor of law in this State, or

(d) upon reference by this Court of conduct affecting any proceeding under this rule, where the acts allegedly constitute a contempt of this Court but did not take place in the actual presence thereof, whether by willful disobedience of any order or judgment of this Court or the Board of Commissioners, by interference with any officer of this Court in the prosecution of any duty, or otherwise.

**(3) Referral for Investigation.** The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association any matters coming to its attention for investigation, as hereinafter provided.

**(4) Application of Rule; Authority and Duty of Local Committees.** From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges; all proceedings for the discipline of such attorneys and counselors at law, persons under suspension for an indefinite period or disbarred from the practice of law, and judges; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. Any committee authorized by any regularly organized bar association or by the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct, contempt, or mental illness is

found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

(5) **Definitions.**

(a) **Misconduct.** Misconduct shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the commission or conviction of a crime involving moral turpitude.

(b) **Mental Illness.** Mental illness shall mean the condition defined in Section 5122.01 (A), Revised Code.

(6) **Manner of Discipline.** Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice

of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

**(7) Effect of Discipline.** A person disbarred shall never thereafter be readmitted to the practice of law in this State. A person who shall have voluntarily surrendered his license to practice and thereafter has been reinstated in the manner hereinafter provided and a person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred. depending upon the seriousness of such misconduct.

**(8) The Complaint; Where Filed; By Whom Signed.** A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted

the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

**(9) Duty of the Board Upon Filing of the Complaint.**

**(a) Notice to Respondent.** The Secretary of the Board of Commissioners shall send a copy of the complaint by registered mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint.

**(b) Suspension of Right to Practice Pending Disposition of Misconduct Complaint.** After an answer has been filed or the time for answer has elapsed, the Court shall entertain such recommendation as the Board may make for the immediate suspension from the practice of law pending disposition of the complaint if the complaint alleges the conviction of a crime involving moral turpitude supported by a certified copy of the judgment entry of the Court convicting the Respondent.

**(c) Mental Illness Suspension.** After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination as provided in (d) hereof, the Board shall forthwith certify the com-

plaint to this Court and the Court may suspend the Respondent from the practice of law.

(d) **Examination.** If the complaint or answer alleges existing mental illness unsupported by a journal entry of a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

(e) **Termination.** Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for the suspension, which is certified by the Board to, and affirmed by, the Court.

(10) **Hearing by Panel of Three Commissioners.** After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(11) **Dismissal of Complaint.** If the panel finds that the complaint or evidence is insufficient, the panel shall make

its certified report of the proceedings and recommendations to the Board of Commissioners which shall review the proceedings, and shall dismiss the complaint, or refer the matter back to the panel for further hearing or the administering of a private reprimand, or may proceed upon the certified report of the proceedings before the panel. The Secretary of the Board of Commissioners shall give notice of a dismissal to the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county or counties in which the Respondent resides and maintains his office, and of the county or counties from which the complaint arose.

If a written request for a conference with the Supreme Court of Ohio is made by the Relator within twenty (20) days after the issuance of such notice, Relator, Respondent and a member of the hearing panel will be called to confer with the Court.

**(12) Private Reprimand; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand and such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by such panel.

If a written request for a conference with the Supreme Court of Ohio is made by the Relator within twenty (20) days after the issuance of such notice, Relator, Respondent and a member of the hearing panel will be called to confer with the Court.

**(13) Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or perma-

nent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

**(14) Review by Entire Board of Commissioners; Board to Administer Private Reprimand.** Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

**(15) Public Reprimand; Suspension or Permanent Disbarment; Duty of Board After Review.** If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection

with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

**(16) Show Cause Order Issued by the Court to Respondent.** On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

**(17) Response to Order to Show Cause and Objections.** The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

**(18) Answer Briefs.** Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

**(19) Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order.** After hearing on objections, or, if objections are not filed within the pre-

scribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent (at his last known address), to the Ohio State Bar Association, to the local bar association or assocations in the county or counties in which the Respondent resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio; the United States Court of Appeals for the Sixth Circuit; and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

If a disciplinary order of the Court provides for a permanent disbarment or suspension for an indefinite period from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

(20) **Proceedings Private; Exceptions.** All proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private except

(a) Where the Respondent shall request in writing that they be public, or

(b) Where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or

(c) Where any disciplinary matter is heard by the Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

**(21) Petition for Reinstatement.** No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed in this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period the Petitioner from the practice of law in this State, or within a period of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

**(22) Contents of Petition for Reinstatement.** Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when such suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under this Rule, to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against Petitioner resulting in his sus-

pension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possess all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

**(23) Costs to be Deposited with Petition for Reinstatement.** Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

**(24) Requisites for Reinstatement.** No person shall be reinstated unless he has established by clear and convincing evidence that he possess all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such case the order of reinstatement may be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Section 6 of Rule XVII shall not apply to any petitioner with respect to whom such an order of reinstatement may have been issued.

**(25) Petition for Reinstatement Referred to Board of**

**Commissioners.** Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

**(26) Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court From Denial of Petition by Board of Commissioners.** The Chairman of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section (22) (c). Such hearing shall be public. Any interested person, any member of the Bar, and any representative of any local bar association or of the Ohio State Bar Association may appear before the hearing panel in support of or in opposition to the petition.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an is-

suance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition any person or organization referred to in Section (22) (c) shall have ten (10) days from the receipt of notice of filing of such report to file objections to the recommendations and brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

**(27) Manner of Service of Notices, etc.** Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by registered mail.

**(28) Quorum of Panel or Board.** A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

**(29) Clerk is Agent for Service of Notices on Non-resident Attorney.** Any nonresident of this State, having been

admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law or judge, pursuant to this Rule.

**(30) Manner of Service on Clerk; Record of Such Service Not a Public Record.** All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by registered mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the service upon said Clerk of this Court, addressed to such Respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of the service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

**(31) Power to Issue Subpoenas.** In investigations and proceedings under this rule, upon application by the Chair-

man, Vice Chairman, Secretary, or Counsel of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a certificate under Section (8) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or any subcommittee thereof, or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

**(32) May Order Depositions.** The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

**(33) Effect of Refusal to Testify.** The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

**(34) Rules of Evidence.** All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

**(35) Docket of Complaints.** The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

**(36) Board May Prescribe Rules.** The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

**(37) Rule to be Liberally Construed.** The process and procedure under this Rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any non-prejudicial irregularity or for any error not resulting in a miscarriage of justice. This Rule and such regulations relating to investigations and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the Courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this Rule. To the extent that application of his amended Rule to such pending proceedings may not be practicable, the rules and regulations in force at the time this amended Rule becomes effective shall continue to apply.

## APPENDIX B

## RULE XIX[3]

## RULES OF PROFESSIONAL CONDUCT

**Section 1.** These rules of professional conduct shall be binding upon all members admitted to practice law in the State of Ohio, and the wilful breach thereof shall be punished by reprimand, by suspension or by disbarment, as provided in Rule XVIII of the Rules of Practice.

The Canons of Professional Ethics and the Canons of Judicial Ethics of the American Bar Association as amended are adopted; and nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation thereof. (The Canons of Professional Ethics were adopted November 13, 1952, and are set forth in 175 Ohio State Reports. The Canons of Judicial Ethics as amended were adopted January 27, 1954, and are set forth in 160 Ohio State Reports.)*

**Section 2.** An attorney at law shall not advertise or otherwise solicit professional employment. This rule shall not apply to the publication or use of ordinary professional cards or conventional listings in legal directories and newspapers.

**Section 3.** An attorney at law shall not employ another to solicit or to obtain or remunerate another for soliciting or obtaining professional employment for him.

**Section 4.** An attorney at law shall not acquire an interest adverse to a client in a subject matter concerning which the attorney has been employed.

**Section 5.** An attorney at law shall not, directly or indirectly, without the consent of his client, purchase prop-

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[3] Same as former Rule XXVIII.

* Canons of Professional and Judicial Ethics are set forth also in 176 Ohio State Reports.

erty at a probate, foreclosure or judicial sale in an action or proceeding in which he appears as attorney for a party.

**Section 6.** An attorney at law shall not represent conflicting interests except with the consent of all parties concerned.

**Section 7.** An attorney at law shall not accept professional employment without first disclosing to his prospective client his relation, if any, with the adverse party, and his interest, if any, in the subject matter of the employment.

**Section 8.** An attorney at law shall not accept employment adverse to a client or former client relating to a matter in reference to which he has obtained confidential information by reason of and in the course of his employment by such client or former client.